

## Introduced by Senator Aanestad

February 22, 2005

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An act to amend Section 1170 of the Penal Code, relating to crimes.

## LEGISLATIVE COUNSEL'S DIGEST

SB 856, as introduced, Aanestad. Sentencing.

Existing law provides for determinate sentencing, as specified.

This bill would make technical, nonsubstantive changes to a provision relating to determinate sentencing.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1170 of the Penal Code is amended to  
2 read:  
3 1170. (a) (1) The Legislature finds and declares that the  
4 purpose of imprisonment for crime is punishment. This purpose  
5 is best served by *imposing* terms proportionate to the seriousness  
6 of the offense *committed*, with provision for uniformity in the  
7 sentences of offenders committing the same offense under  
8 similar circumstances. The Legislature further finds and declares  
9 that the elimination of disparity and the provision of uniformity  
10 of sentences can best be achieved by determinate sentences fixed  
11 by statute in proportion to the seriousness of the offense as  
12 determined by the Legislature to be imposed by the court with  
13 specified discretion.  
14 (2) Paragraph (1) shall not be construed to preclude programs,  
15 including educational programs, that are designed to rehabilitate  
16 nonviolent, first-time felony offenders. The Legislature

1 encourages the development of policies and programs designed  
2 to educate and rehabilitate nonviolent, first-time felony offenders  
3 consistent with the purpose of imprisonment.

4 (3) In any case in which the punishment prescribed by statute  
5 for a person convicted of a public offense is a term of  
6 imprisonment in the state prison of any specification of three  
7 time periods, the court shall sentence the defendant to one of the  
8 terms of imprisonment specified unless the convicted person is  
9 given any other disposition provided by law, including a fine,  
10 jail, probation, or the suspension of imposition or execution of  
11 sentence or is sentenced pursuant to subdivision (b) of Section  
12 1168 because he or she had committed his or her crime prior to  
13 July 1, 1977. In sentencing the convicted person, the court shall  
14 apply the sentencing rules of the Judicial Council. The court,  
15 unless it determines that there are circumstances in mitigation of  
16 the punishment prescribed, shall also impose any other term that  
17 it is required by law to impose as an additional term. Nothing in  
18 this article shall affect any provision of law that imposes the  
19 death penalty, that authorizes or restricts the granting of  
20 probation or suspending the execution or imposition of sentence,  
21 or expressly provides for imprisonment in the state prison for  
22 life. In any case in which the amount of preimprisonment credit  
23 under Section 2900.5 or any other provision of law is equal to or  
24 exceeds any sentence imposed pursuant to this chapter, the entire  
25 sentence shall be deemed to have been served and the defendant  
26 shall not be actually delivered to the custody of the Director of  
27 Corrections. The court shall advise the defendant that he or she  
28 shall serve a period of parole and order the defendant to report to  
29 the parole office closest to the defendant's last legal residence,  
30 unless the in-custody credits equal the total sentence, including  
31 both confinement time and the period of parole. The sentence  
32 shall be deemed a separate prior prison term under Section 667.5,  
33 and a copy of the judgment and other necessary documentation  
34 shall be forwarded to the Director of Corrections.

35 (b) When a judgment of imprisonment is to be imposed and  
36 the statute specifies three possible terms, the court shall order  
37 imposition of the middle term, unless there are circumstances in  
38 aggravation or mitigation of the crime. At least four days prior to  
39 the time set for imposition of judgment, either party or the  
40 victim, or the family of the victim if the victim is deceased, may

1 submit a statement in aggravation or mitigation to dispute facts in  
2 the record or the probation officer's report, or to present  
3 additional facts. In determining whether there are circumstances  
4 that justify imposition of the upper or lower term, the court may  
5 consider the record in the case, the probation officer's report,  
6 other reports including reports received pursuant to Section  
7 1203.03 and statements in aggravation or mitigation submitted by  
8 the prosecution, the defendant, or the victim, or the family of the  
9 victim if the victim is deceased, and any further evidence  
10 introduced at the sentencing hearing. The court shall set forth on  
11 the record the facts and reasons for imposing the upper or lower  
12 term. The court may not impose an upper term by using the fact  
13 of any enhancement upon which sentence is imposed under any  
14 provision of law. A term of imprisonment shall not be specified  
15 if imposition of sentence is suspended.

16 (c) The court shall state the reasons for its sentence choice on  
17 the record at the time of sentencing. The court shall also inform  
18 the defendant that as part of the sentence after expiration of the  
19 term he or she may be on parole for a period as provided in  
20 Section 3000.

21 (d) When a defendant subject to this section or subdivision (b)  
22 of Section 1168 has been sentenced to be imprisoned in the state  
23 prison and has been committed to the custody of the Director of  
24 Corrections, the court may, within 120 days of the date of  
25 commitment on its own motion, or at any time upon the  
26 recommendation of the Director of Corrections or the Board of  
27 Prison Terms, recall the sentence and commitment previously  
28 ordered and resentence the defendant in the same manner as if he  
29 or she had not previously been sentenced, provided the new  
30 sentence, if any, is no greater than the initial sentence. The  
31 resentence under this subdivision shall apply the sentencing rules  
32 of the Judicial Council so as to eliminate disparity of sentences  
33 and to promote uniformity of sentencing. Credit shall be given  
34 for time served.

35 (e) (1) Notwithstanding any other law and consistent with  
36 paragraph (1) of subdivision (a) of Section 1170, if the Director  
37 of Corrections or the Board of Prison Terms or both determine  
38 that a prisoner satisfies the criteria set forth in paragraph (2), the  
39 director or the board may recommend to the court that the  
40 prisoner's sentence be recalled.

1 (2) The court shall have the discretion to resentence or recall if  
2 the court finds both of the following:

3 (A) The prisoner is terminally ill with an incurable condition  
4 caused by an illness or disease that would produce death within  
5 six months, as determined by a physician employed by the  
6 department.

7 (B) The conditions under which the prisoner would be  
8 released or receive treatment do not pose a threat to public safety.

9 The Board of Prison Terms shall make findings pursuant to this  
10 subdivision before making a recommendation for resentence or  
11 recall to the court. This subdivision does not apply to a prisoner  
12 sentenced to death or a term of life without the possibility of  
13 parole.

14 (3) Within 10 days of receipt of a positive recommendation by  
15 the director or the board, the court shall hold a hearing to  
16 consider whether the prisoner's sentence should be recalled.

17 (4) The prisoner or his or her family member or designee may  
18 request consideration for recall and resentencing by contacting  
19 the chief medical officer at the prison or the Director of  
20 Corrections. Upon receipt of the request, if the director  
21 determines that the prisoner satisfies the criteria set forth in  
22 paragraph (2), the director or board may recommend to the court  
23 that the prisoner's sentence be recalled. The director shall submit  
24 a recommendation for release within 30 days in the case of  
25 inmates sentenced to determinate terms and, in the case of  
26 inmates sentenced to indeterminate terms, the director may make  
27 a recommendation to the Board of Prison Terms with respect to  
28 the inmates who have applied under this section. The board shall  
29 consider this information and make an independent judgment  
30 pursuant to paragraph (2) and make findings related thereto  
31 before rejecting the request or making a recommendation to the  
32 court. This action shall be taken at the next lawfully noticed  
33 board meeting.

34 (5) Any recommendation for recall submitted to the court by  
35 the Director of Corrections or the Board of Prison Terms shall  
36 include one or more medical evaluations, a postrelease plan, and  
37 findings pursuant to paragraph (2).

38 (6) If possible, the matter shall be heard before the same judge  
39 of the court who sentenced the prisoner.

1 (f) Any sentence imposed under this article shall be subject to  
2 the provisions of Sections 3000 and 3057 and any other  
3 applicable provisions of law.

4 (g) A sentence to state prison for a determinate term for which  
5 only one term is specified, is a sentence to state prison under this  
6 section.

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